

PAUL J. RIEHLE (SBN 115199)
paul.riehle@faegredrinker.com
FAEGRE DRINKER BIDDLE & REATH LLP
Four Embarcadero Center
San Francisco, California 94111
Telephone: (415) 591-7500
Facsimile: (415) 591-7510

GARY A. BORNSTEIN (*pro hac vice*)
gbornstein@cravath.com
YONATAN EVEN (*pro hac vice*)
yeven@cravath.com
LAUREN A. MOSKOWITZ (*pro hac vice*)
lmoskowitz@cravath.com
JUSTIN C. CLARKE (*pro hac vice*)
jcclarke@cravath.com
M. BRENT BYARS (*pro hac vice*)
mbyars@cravath.com
CRAVATH, SWAINE & MOORE LLP
825 Eighth Avenue
New York, New York 10019
Telephone: (212) 474-1000
Facsimile: (212) 474-3700

*Attorneys for Plaintiff and Counter-defendant
Epic Games, Inc.*

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

EPIC GAMES, INC.,

Plaintiff, Counter-defendant,

v.

APPLE INC.,

Defendant, Counterclaimant.

Case No. 4:20-CV-05640-YGR-TSH

**NOTICE OF NON-COMPLIANCE AND
INTENT TO MOVE TO ENFORCE UCL
INJUNCTION**

Judge: Hon. Yvonne Gonzalez Rogers

TO THE COURT, ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

On September 10, 2021 this Court issued its Rule 52 Order After Trial on the Merits (Dkt. 812) (the “Rule 52 Order”) and a Permanent Injunction that restrained and enjoined Defendant and Counterclaimant Apple Inc. (“Apple”) from “prohibiting developers from (i) including in their apps and their metadata buttons, external links, or other calls to action that direct customers to purchasing mechanisms, in addition to In-App Purchase and (ii) communicating with customers through points of contact obtained voluntarily from customers through account registration within the app” (Dkt. 813) (the “Injunction”). The Injunction further provides that “[t]he Court will retain jurisdiction over the enforcement and amendment of the [I]njunction” and if any part of the Injunction is violated, Epic “may, by motion with notice to the attorneys for defendant, apply for sanctions or other relief that may be appropriate”. (*Id.*)

On January 16, 2024—the same day the Supreme Court denied Apple’s petition for a writ of certiorari, thus exhausting its appeal of the Injunction—Apple filed a document titled “Notice of Compliance with UCL Injunction”, which described new App Store Review Guidelines and asserted that “[a]s of January 16, 2024, Apple has fully complied with the Injunction”. (Dkt. 871 at 1 (the “Notice of Compliance”).)

PLEASE TAKE NOTICE that Plaintiff and Counter-defendant Epic Games, Inc. (“Epic”) disputes Apple’s purported compliance with the Injunction and intends to file a motion setting forth the bases for Apple’s non-compliance and requesting appropriate relief from this Court. Epic is in the process of meeting and conferring with Apple regarding a briefing schedule for Epic’s forthcoming motion.

1 Dated: January 30, 2024

Respectfully submitted,

2 By: /s/ Gary A. Bornstein

3 **FAEGRE DRINKER BIDDLE & REATH**
4 **LLP**

Paul J. Riehle

6 **CRAVATH, SWAINE & MOORE LLP**

Gary A. Bornstein

7 Yonatan Even

8 Lauren A. Moskowitz

Justin C. Clarke

9 M. Brent Byars

10 *Attorneys for Plaintiff and Counter-defendant*
11 EPIC GAMES, INC.